No. (1)

Supreme Court, U.S.
FILED

09-756 DEC 23 2009

OFFICE OF THE CLERK
William K. Suter, Clerk

In The
Supreme Court of the United States

JEFFREY C. BOURGEOIS, INDIVIDUALLY AND ON BEHALF OF DALE BOURGEOIS, MARK BOURGEOIS, INDIVIDUALLY AND ON BEHALF OF DALE BOURGEOIS, REBEKAH L. BOURGEOIS, INDIVIDUALLY AND ON BEHALF OF DALE BOURGEOIS AND RENEE B. BOURGEOIS,

Petitioners,

v.

BOOMTOWN, L.L.C. OF DELAWARE, PINNACLE ENTERTAINMENT, INC. OF DELAWARE, M/V BOOMTOWN BELLE II AND LOUISIANA A-1 GAMING, A LOUISIANA PARTNERSHIP IN COMMENDAM,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeal, Fifth Circuit, State Of Louisiana

PETITION FOR A WRIT OF CERTIORARI

JOHN F. YOUNG, JR.
Counsel of Record
One Galleria Boulevard, Suite 1400
P.O. Box 8288
Metairie, Louisiana 70011-8288
(504) 836-6500
Counsel for Petitioners

JULIE QUINN
419 Northline
Metairie, Louisiana 70005
(504) 322-2592
Counsel for Petitioners

L. ERIC WILLIAMS, JR.
3021 35th Street, Suite B
Metairie, Louisiana 70001
(504) 832-9898
Counsel for Petitioners

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED FOR REVIEW

This Court previously held that the definition for a "vessel" is set forth in 1 U.S.C. section 3, which provides that **"[t]he word 'vessel' includes every description of watercraft or other artificial contrivance used, *or capable of being used*, as a means of transportation on water."** *Stewart v. Dutra Construction Co.*, 543 U.S. 481, 125 S. Ct. 1118 (2005); 1 U.S.C. Section 3 (emphasis added). There is a ***significant circuit split*** among federal and state courts post-*Stewart* (and pre-*Stewart*) on whether a dockside riverboat casino, built for, and capable of being used as, a means of transportation, constitutes a "vessel" under federal admiralty law, resulting in irregular application of federal law for hundreds of injured passengers each year. Although the riverboat in this case was built specifically for navigation, sailed countless times carrying hundreds of passengers, and is required to set sail upon certain conditions, the court of appeals concluded that the riverboat was not a "vessel" under federal admiralty law. In doing so, the court exacerbated an already large conflict between federal and state courts on the question of whether dockside riverboat casinos are "vessels."

The question presented here is:

Do dockside riverboat casinos constitute "vessels" under the Admiralty Extension Act, 46 U.S.C. section 30101?

LIST OF PARTIES

Petitioners, Jeffrey C. Bourgeois, Individually and on behalf of Dale Bourgeois, Mark Bourgeois, Ind. and on behalf of Dale Bourgeois, Rebekah L. Bourgeois, Individually and on behalf of Dale Bourgeois and Renee B. Bourgeois. Defendants, Boomtown, L.L.C. of Delaware, Pinnacle Entertainment, Inc. of Delaware, M/V BOOMTOWN BELLE II and Louisiana A-1 Gaming, A Louisiana Partnership in Commendam.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	i
LIST OF PARTIES	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
BASIS FOR JURISDICTION IN THIS COURT	1
CONSTITUTIONAL AND STATUTORY PROVISIONS	2
STATEMENT OF THE CASE	5
REASONS FOR GRANTING THE WRIT	16
I. The M/V BOOMTOWN BELLE II Satisfies the "Location" Test Because It Is a "Vessel on Navigable Water"	18
II. The M/V BOOMTOWN BELLE Has a "Connection with Maritime Activity"	30
a. Intoxicated Passengers on a Ship Such as the M/V BOOMTOWN BELLE Have the Potential to Disrupt Maritime Activity	31
b. The M/V BOOMTOWN BELLE Is Closely Related to Activity Traditionally Subject to Admiralty Law	34
CONCLUSION	37

TABLE OF CONTENTS – Continued

Page

APPENDIX

Opinion of the Fifth Circuit Court of Appeal.....App. 1

Trial Court's Judgment & Reasons for Judgment.....App. 9

Denial of Plaintiff's Application for Supervisory Writ to the Louisiana Supreme Court.....App. 12

Judgment – 14th JDC for the Parish of Calcasieu – *Breaux v. St. Charles Gaming*.....App. 14

Letter from Capt. E.M. Stanton to Broussard....App. 16

U.S. Army Corps of Eng. Team New Orleans Website Home Page .....App. 19

Certificate of Inspection .....App. 22

La. House Bill 2022 (HLS4-01-2770) authored by Rep. Hunt Downer .....App. 28

Lt. Commander Keel's Response to Freedom of Inf. Act Request 1/14/09.....App. 31

Lt. Commander Keel's Response to Freedom of Inf. Act Request 1/7/09.....App. 33

Defendants' Opposition to Plaintiff's App. for Supervisory Writs to LA Supreme Court.....App. 35

Letter from U.S. Coast Guard to State of Louisiana, Ms. E.A. Wills, P.E.....App. 37

Depo. of D. Davis .....App. 40

TABLE OF AUTHORITIES

Page

CASES

Bay Casino, LLC v. M/V ROYAL EMPRESS, 199 F.R.D. 464 (E.D.N.Y. 1999) 32, 35

Board of Commissioners of Orleans Levee District v. M/V BELLE OF ORLEANS, 535 F.3d 1299 (11th Cir. 2008).....*passim*

Booten v. Argosy Gaming Company d/b/a Alton Belle Casino, 848 N.E.2d 141 (Ill. 3d Cir. 2006) 6, 25

Breaux v. St. Charles Gaming, Case No. 2005-000272, (14th JDC, State of Louisiana 2007).....7, 8

Bunch v. Canton Marine Towing Co., Inc., 419 F.3d 868 (8th Cir. 2005) 26

Butler v. American Trawler Co., 887 F.2d 20 (1st Cir. 1989).....36

Carey v. Bahama Cruise Lines, 864 F.2d 201 (1st Cir. 1989).....36

Credit Suisse First Boston Mortgage Capital, LLC v. Dorris, 102 F.Supp.2d 709 (N.D. MS 2001).....6

Davis v. Missouri Gaming Company d/b/a Argosy Riverside Casino, 51 S.W.3d 168 (Mo. App. W.D. 2001).....6, 7, 20

De La Rosa v. St. Charles Gaming Co., 474 F.3d 185 (5th Cir. 2006) 6, 7, 23, 27

Duluth Superior Excursions, 623 F.2d 1241 (8th Cir. 1980) 32

TABLE OF AUTHORITIES – Continued

Page

Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527, 115 S.Ct. 1043 (1985) ..... *passim*

Hertz v. Treasure Chest Casino, 274 F.Supp. 795 (E.D. La. 2003) 7

Holmes v. Atlantic Sounding Co., 437 F.3d 4418 (5th Cir. 2006) 19, 25, 26, 27

Horak v. Argosy Gaming Co., 648 N.W.2d 137 (Iowa 2002) 32

Howard v. Southern Illinois Riverboat Casino Cruises, 364 F.3d 854 (7th Cir. 2004) 7

In re AMGAM Assn., 239 B.R. 737 (S.D. MS 1999) 6

In re Silver Slipper Casino Venture, LLC, 264 Fed. Appx. 363 (5th Cir. 2008) 6

Jones v. One Fifty Foot Gulfstar Motor Sailing Yacht, 625 F.2d 44 (5th Cir. 1989) 27

Luby v. Carnival Cruise Lines, 633 F.Supp. 40 (S.D. Fl. 1986) 36

M/V MARIFAX v. McCory, 391 F.2d 909 (5th Cir. 1968) 27

Martin v. Boyd Gaming, 252 F.Supp. 321 (E.D. La. 2003) 7

Meyer v. Carnival Cruise Line, [1994 WL 8320006] (N.D. Cal. 1994) 33

Miami River Boat Yard, Inc. v. 60' Houseboat, 390 F.2d 596 (5th Cir. 1968) 27

TABLE OF AUTHORITIES – Continued

Page

Palmer v. Fayard Moving & Transportation Corp., 930 F.2d 437 (5th Cir. 1991) 36

Pavone v. Mississippi Riverboat Amusement Corp, 52 F.3d 560 (5th Cir. 2006) 6, 24, 27

Pleason v. Gulfport Shipbuilding Corp., 221 F.2d 621 (5th Cir. 1955) 24, 27

Quinn v. St. Charles Gaming Co., Inc., 815 So.2d 963 (La. App. 3d Cir. 2002).....34, 35

Sisson v. Ruby, 497 U.S. 358, 110 S.Ct. 2892, 111 L.Ed.2d 292 (1990) 31

Stewart v. Dutra Construction Co., 543 U.S. 481, 125 S.Ct. 1118 (2005) .....*passim*

Tagliere v. Harrah's Ill. Corp., 445 F.3d 1012 (7th Cir. 2006) .....*passim*

Their v. Lykes Bros., Inc., 900 F.Supp. 864 (S.D. Tx. 1995).....33

Watson v. Indiana Gaming Co., 337 F.Supp.2d 951 (E.D. KY 2004) 7

Weaver v. Hollywood Casino-Aurora, Inc., 255 F.3d 379 (7th Cir. 2001) 31

Young, et al. v. Players Lake Charles, LLC, 47 F.Supp.2d 832 (S.D. Tx. 1999).....33, 36

STATUTES

La. Rev. Stat. 27:44(23) .....*passim*

La. Rev. Stat. 27:65.....3, 10, 28

TABLE OF AUTHORITIES – Continued

Page

La. Rev. Stat. 27:70 ..... 3, 11

La. Rev. Stat. 27:81 ..... 4, 11

1 U.S.C. §3 ..... 2, 6, 17, 18, 19

28 U.S.C. §1257 1

46 U.S.C. §30101 ..... 2, 16, 17, 25, 34

OTHER AUTHORITIES

Benedict on Admiralty, section 165 (rev. 7th ed. 2004) 18

OPINIONS BELOW

1) The 24th Judicial District Court for the State of Louisiana (Louisiana trial court) entered summary judgment on behalf of plaintiffs/applicants, finding that the defendant M/V BOOMTOWN BELLE was a "vessel" under federal admiralty law. *See* Summary Judgment, Appendix at App. 9.

2) The Louisiana Court of Appeal for the Fifth Circuit (appellate court) reversed the trial court's judgment, finding that the defendant M/V BOOMTOWN BELLE was *not* a "vessel" under federal admiralty law. *See* Judgment, Louisiana Fifth Circuit Court of Appeal, Appendix at App. 1.

3) The Louisiana Supreme Court (state court of last resort) denied plaintiffs Application for Supervisory Writ, thereby affirming the decision in favor of defendants/respondents. *See* Writ Denial, Appendix at App. 12.

BASIS FOR JURISDICTION IN THIS COURT

The Louisiana Supreme Court rendered a judgment on September 25th, 2009. This Court has jurisdiction under 28 U.S.C. §1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS

1 U.S.C. §3:

> The word "vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

46 U.S.C. §30101:

> The admiralty and maritime jurisdiction of the United States extends to and includes cases of injury or damage, to a person or property, caused by a vessel on navigable waters, even though the injury or damage is done or consummated on land.

La. Rev. Stat. 27:44(23):

> "Riverboat" means a vessel which:
>
> (a) Carries a valid Certificate of Inspection issued by the United States Coast Guard with regard to the carriage of passengers on designated rivers or waterways within or contiguous to the boundaries of the state of Louisiana.
>
> (b) Carries a valid Certificate of Inspection from the United States Coast Guard for the carriage of a minimum of six hundred passengers and crew.
>
> (c) Has a minimum length of one hundred fifty feet.
>
> (d) Is of such type and design so as to replicate as nearly as practicable historic

> Louisiana river borne steamboat passenger vessels of the nineteenth century era. It shall not, however, be a requirement that the vessel be steam-propelled or maintain overnight facilities for its passengers.
>
> (e) Is paddlewheel driven.

La. Rev. Stat. 27:70(3):

> The applicant must demonstrate a proven ability to operate a vessel of comparable size and capacity and of comparable complexity to a riverboat so as to ensure the safety of its passengers. The applicant must demonstrate that each employee involved with navigation and passenger safety holds United States Coast Guard approved certification for lifeboat, firefighting, and first aid.

La. Rev. Stat. 27:65(B)(1)(c):

> For all licensees other than those licensed pursuant to R.S. 27:65(B)(1)(a) or (b), gaming may only be conducted on a riverboat while it is docked and the licensee shall not conduct cruises or excursions. A riverboat gaming licensee authorized to conduct gaming on a riverboat while it is docked pursuant to this Subparagraph shall pay the franchise fee in the amount provided in R.S. 27:91(C)(1) and the additional franchise fee in the amount provided in R.S. 27:91(C)(2).

Former La. Rev. Stat. 27:65:

* * *

B. Gaming shall be conducted aboard riverboats, subject to the following requirements:

(1) No gaming may be conducted while a riverboat is docked, unless the vessel is docked for less than forty-five minutes between excursions. However, should the master of the riverboat reasonably determine and certify in writing that the weather conditions or the water conditions are such that those conditions, which the master shall specify, present a danger to the riverboat, its passengers and crew, then the riverboat may remain docked and gaming may take place until such time as the master determines that those conditions have sufficiently diminished to proceed or until the duration of the authorized excursion has expired.

La. Rev. Stat. 27:81:

The board shall issue a permit to any person who provides maritime crew, staff, or maritime services, including consulting services involving maritime issues, directly related to the maintenance and operation of a riverboat. The person or, if the person is a corporation or firm, an officer of the corporation or firm furnishing such crew or such maritime services shall possess, as a minimum, credentials equivalent to those

> required by the United States Coast Guard to be licensed as a master, chief engineer, or pilot. Any person offering to provide maritime crew, staff, or such direct maritime services after October 1, 1999, shall be issued a permit in accordance with the provisions of this Subsection prior to providing such crew, staff, or maritime services to a riverboat.

STATEMENT OF THE CASE

Plaintiffs/applicants submit to this Court that *compelling* reasons exist for granting its application for Writ of Certiorari. Federal and state courts alike have struggled with the definition of "vessel" for docked riverboat casinos, particularly after this Court's decision in *Stewart v. Dutra Construction Co.*, 543 U.S. 481, 125 S.Ct. 1118 (2005), such that there is contradictory application of federal admiralty law for injured passengers, resulting in a circuit split and disjointed decisions between courts at every level. These riverboat casinos are substantively identical in nature, and ***the circuit split is based on a contradictory application of federal law, only***. For example, the U.S. Eleventh Circuit, U.S. Seventh Circuit and various federal and state district courts found that dockside riverboat casinos constitute "vessels" under federal admiralty law pursuant to *Stewart*, while the U.S. Fifth Circuit and various federal district and state courts held that they are *not* vessels under *Stewart*. *See, e.g., Board of*

Commissioners of Orleans Levee District v. M/V Belle of Orleans, 535 F.3d 1299 (11th Cir. 2008) (Louisiana dockside riverboat casino *is* a "vessel" under *Stewart*); *Tagliere v. Harrah's Illinois Corp.*, 445 F.3d 1012 (7th Cir. 2006) (Illinois dockside riverboat casino *is* a "vessel" under *Stewart*); *In re AMGAM Assn.*, 239 B.R. 737 (S.D. MS 1999) (Mississippi riverboat casino *is* a "vessel" under federal admiralty law); *Credit Suisse First Boston Mortgage Capital, LLC v. Doris,* 102 F.Supp.2d 709, 713 (N.D. MS 2001) (Mississippi riverboat casino *was* a "vessel" as defined by 1 U.S.C. §3); *Booten v. Argosy Gaming Company d/b/a Alton Belle Casino*, 848 N.E.2d 141, 146 (Ill. 3d Cir. 2006) (pursuant to *Stewart,* defendant riverboat casino is a "vessel," despite that it "stopped cruising [in] 1999, the day after the law changed to allow gambling to occur [dockside] and has no plans to resume cruising, [because] [t]he Alton Belle is clearly **capable** of maritime transportation") (emphasis added). *But see De La Rosa v. St. Charles Gaming Co.*, 474 F.3d 185 (5th Cir. 2006) (Louisiana dockside riverboat casino *not* a vessel under *Stewart*, relying upon pre-*Stewart Pavone v. Mississippi Riverboat Amusement Corp.*, 52 F.3d 560, 570 (5th Cir. 1995) (Mississippi riverboat casino not a "vessel" under general maritime law or Jones Act); (*Davis v. Players Lake Charles Riverboat,* 74 F.Supp.2d 675, 676 (W.D. La. 1999) (Louisiana riverboat casino is *not* a "vessel" under admiralty law)); *In re Silver Slipper Casino Venture, LLC*, 264 Fed. Appx. 363 (5th Cir. 2008) (Mississippi riverboat casino *not* a vessel because "*Stewart* did not expand

the term [vessel] to include permanently-moored casinos").[1]

Perhaps even more absurd is that courts have even issued split decisions ***with respect to the identical boat!*** *See, e.g., Breaux v. St. Charles Gaming,* Case No. 2005-000272, (14th JDC, State of Louisiana 2007) (Louisiana riverboat casino "Crown Casino" *is* a "vessel" under *Stewart*); *De La Rosa v. St. Charles Gaming Co.,* 474 F.3d 185 (5th Cir. 2006) (Louisiana riverboat casino "Crown Casino" is *not* a "vessel" under *Stewart*).[2, 3] Plaintiffs suggest to this

---

[1] Courts create additional confusion and inconsistent opinions as to whether dockside riverboat casinos are "vessels" when deciding Jones Act claims. *See, e.g., Martin v. Boyd Gaming*, 252 F.Supp. 321 (E.D. La. 2003) (used the terms "vessel" under admiralty law and "vessel in navigation" for Jones Act interchangeably to deny plaintiff's Jones Act claim); *Davis v. Missouri Gaming*, 51 S.W.3d 168 (W.D. App. Mo. 2001) (dockside riverboat casino *may* be "vessel" for Jones Act claim as it was built for navigation and floated); *Howard v. Southern Illinois Riverboat Casino Cruises*, 364 F.3d 854 (7th Cir. 2004) (regardless of the outcome in *Stewart*, Illinois dockside riverboat casino is *not* a vessel "in navigation" under Jones Act); *Hertz v. Treasure Chest Casino*, 274 F.Supp. 795 (E.D. La. 2003) and *Watson v. Indiana Gaming Co.*, 337 F.Supp.2d 951 (E.D. KY 2004) (dockside riverboat casinos were *not* "vessels in navigation" under Jones Act).

[2] Ironically, counsel for the Louisiana riverboat M/V Crown Casino in *Breaux* (where LA district court found it *was* a vessel, writs denied by both LA appellate court and LA Supreme Court), is the exact counsel for defendant here, Louisiana riverboat casino M/V BOOMTOWN BELLE (wherein Louisiana appellate court reversed the trial court to find that defendant is *not* a vessel). Predictably, but nevertheless unjustly, on information

(Continued on following page)

Honorable Court that lower courts have sufficiently percolated on this issue such that two very diverse philosophies and interpretations have emerged – resulting in a complete lack of uniformity with respect to decisions and application of law. ***It is critical that the U.S. Supreme Court step in and resolve this issue at this time.***

Defendant, the M/V BOOMTOWN BELLE, is a fully operational riverboat lying afloat on a navigable waterway (the "Harvey Canal"), which has sailed countless times. *See* Appendix at App. 33, 1/7/09 Letter from Lt. Commander S.R. Keel, U.S. Coast Guard to Williams Law Office. Not only does Louisiana law specifically require the M/V BOOMTOWN BELLE to be ***capable of navigation*** at all times

---

and belief, such counsel recently offered the *Breaux* plaintiff a settlement amount for defendant's tortuous conduct (in a nearly identical fact pattern as this case), but has refused to offer plaintiff a cent for defendant's tortuous conduct here, because of the LA appellate court's decision that defendant is not a "vessel" under *Stewart*. Plaintiffs/applicants submit to this court that plaintiffs will continue to have irregular recovery for identical injuries unless this Court steps in to clarify the split in the circuits and the definition of "vessel" as it applies to dockside riverboat casinos.

[3] Even the Louisiana Supreme Court has taken a contradictory position on this issue: in this case, the Louisiana Supreme Court denied writs to review the Louisiana Fifth Circuit's decision which found defendant was *not* a vessel under *Stewart*. However, the Louisiana Supreme Court also denied writs to review the Louisiana Third Circuit's decision that a Louisiana riverboat casino *was* a vessel under *Stewart*. These riverboats, by state law requirements, are substantively identical.

and licensed by the U.S. Coast Guard, **but the U.S. Coast Guard specifically requires the M/V BOOMTOWN BELLE to set sail upon *"gale force winds"* during a hurricane**. *See* La. Rev. Stat. 27:44(23); 7/13/09 Letter from Captain E. M. Stanton, U.S. Coast Guard, to Parish President A. Broussard, Jefferson Parish, State of Louisiana, Exhibit "D." The Harvey Canal is located just adjacent to the Mississippi River and the City of New Orleans (and just miles from the Gulf of Mexico) – as such, hurricanes, levee protection, and flood control are significant issues impacting commerce in the port city of New Orleans and it surrounding area, requiring the removal of all vessels in the Harvey Canal under certain conditions. *See, e.g.*, U.S. Army Corps of Engineers "Team New Orleans" website home page, Appendix at App. 19; 7/13/09 Letter from Captain Stanton to A. Broussard, Parish President of Jefferson Parish, State of Louisiana, Appendix at App. 16.

In 1991, Louisiana law provided for 15 riverboat gaming licenses to be distributed to 15 operators to allow limited gambling on riverboats ***required to sail***. *See* Act 753 of the 1991 legislative session, enacted into former La. Rev. Stat. 27:65. Accordingly, M/V BOOMTOWN BELLE was ***built*** as a navigable casino riverboat, and sailed on its own to its present location, the Harvey Canal. The boat loaded passengers and set sail countless times.

In 2001, Louisiana law was amended to now require those riverboat casinos to remain *dockside* while conducting gaming activities, and completely

revamped and re-wrote its code relating to riverboats. *See, e.g.*, La. Rev. Stat. 27:65. Significantly, Louisiana reaffirmed its intent to require riverboat casinos to be capable of transportation and rejected proposals to make them "permanently moored vessels withdrawn from navigation." *See* proposed Louisiana Legislation which failed at Appendix at App. 28. For example, Louisiana law continued to specifically require the M/V BOOMTOWN BELLE to remain a fully operational seagoing vessel for the carriage of a ***minimum*** of 600 passengers.

> "Riverboat" ***means a vessel*** which:
>
> (a) **Carries a valid Certificate of Inspection issued by the United States Coast Guard *with regard to the carriage of passengers on designated rivers or waterways*** within or contiguous to the boundaries of the state of Louisiana.
>
> (b) **Carries a valid Certificate of Inspection from the United States Coast Guard *for the carriage of a minimum of six hundred passengers and crew.***
>
> (c) Has a minimum length of one hundred fifty feet.
>
> (d) Is of such type and design so as to replicate as nearly as practicable historic Louisiana river borne steamboat passenger vessels of the nineteenth century era. It shall not, however, be a requirement

> that the vessel be steam-propelled or maintain overnight facilities for its passengers.
>
> (e) ***Is paddlewheel driven.***

See La. Rev. Stat. 27:44(23) (emphasis added). *See also*, La. Rev. Stat. 27:70 (wherein the legislature deleted and amended large sections of this statute, but specifically retained the requirement that applicants for gaming licenses "must demonstrate a proven ability to **operate a vessel of comparable size** and capacity and of comparable complexity to a riverboat so as to ensure the **safety of its passengers**. *The applicant must demonstrate that* ***each employee involved with navigation and passenger safety holds United States Coast Guard approved certification for lifeboat***, fire-fighting, and first aid") (emphasis added); La. Rev. Stat. 27:81 ("[t]he board shall issue a permit to any person who provides **maritime crew, staff, or maritime services,** including consulting services involving maritime issues, directly related to the maintenance and operation of a riverboat. The person or . . . firm furnishing such crew or such maritime services shall possess, as a minimum, **credentials equivalent to those required by the United States Coast Guard to be licensed as a master, chief engineer, or pilot**") (emphasis added).

Conversely, as noted above, **Louisiana law-makers considered, and specifically *rejected* the proposal "[t]o provide that a riverboat includes**

a continuously moored vessel determined to be removed from navigation" and to remove the requirement for a U.S. Coast Guard Inspection certificate. *See* HB2022, Appendix at App. 28.

It is not disputed that the M/V BOOMTOWN BELLE is a Louisiana licensed riverboat casino pursuant to the above Louisiana law, licensed and inspected by the U.S. Coast Guard ***for the carriage of 2,461 passengers and crew***, was built for navigation and sailed countless times. *See* Certificate of Inspection, Appendix at App. 22. In approximately 2001, the M/V BOOMTOWN BELLE moored to the dock to conduct gaming pursuant to a change in Louisiana law, and receives certain utilities shoreside while docked. However, **the M/V BOOMTOWN BELLE at all times was required to remain "capable of navigation."** *See* La. Rev. Stat. 27:44(23). The United States Coast Guard explained "[t]he M/V Boomtown Belle, II was continuously moored in accordance with the Certificate of Inspection and ***the vessel could navigate or set sail as needed with the proper preparations made which includes contacting the OCMI New Orleans prior to getting underway.***" *See* Lt. Commander Keel's Response to Freedom of Information Act Request, 1/14/09, Appendix at App. 31 (emphasis added). Further, to obtain the Certificate of Inspection from the United States Coast Guard, the M/V BOOMTOWN BELLE II is required to: **employ a marine crew licensed by the U.S. Coast Guard,**

maintain mandatory insurance coverage for a fully operational vessel, and **undergo quarterly inspections,** and must meet all of Louisiana state law requirements to maintain a "maritime" license as set forth above.

Defendants argue that the M/V BOOMTOWN BELLE is "permanently moored [and its] use as a 'means of transportation on water' is not a practical possibility and is merely theoretical," because the owner has no ***desire*** to set sail due to gaming operations, and because it receives shoreside utilities. However, this gross and knowing misrepresentation is underscored by the U.S. Coast Guard's clear directives to the M/V BOOMTOWN BELLE:

> "Coast Guard Sector New Orleans officials met with the Southeast Louisiana Flood Protection Authority on January 16, 2009 to discuss areas of concern for the upcoming hurricane season. * * * In response to concerns raised at this meeting, **the Coast Guard will take all actions necessary to *prohibit all vessels from . . . the Harvey Canal*** [and] these designated areas shall not be used as a safe haven. **The requirements will be in effect 24 hours prior to expected gale force winds through post-storm landfall, or other conditions as determined by the Captain of the Port.** If necessary, the Captain of the Port is prepared to issue specific order directed at lingering vessels."

See 4/10/09 Letter from U.S. Coast Guard to State of Louisiana, Ms. E.A. Wills, P.E., Appendix at App. 37 (emphasis added). Thereafter, the Coast Guard specifically advised regarding the M/V BOOMTOWN BELLE:

> Based on events that occurred during Hurricanes Gustav [in 2008] and Katrina [in 2005], **the Coast Guard has proposed a regulation which would prohibit floating vessels from being present in the Harvey Canal ... before a hurricane. Simply put, prior to the arrival of storm force winds, *all floating vessels must be removed from the Harvey Canal or sunk in place. This includes the Boomtown Casino.* The proposal is meant to protect the Harvey Canal levee (and eventually the new floodwall) from damage by vessel that may be moved by a storm surge.**

See 7/13/09 Letter from Captain E.M. Stanton, U.S. Coast Guard, to Parish President A. Broussard, Jefferson Parish, State of Louisiana, Appendix at App. 16 (emphasis added).[4]

---

[4] While the Coast Guard acknowledges that a vessel in the Harvey Canal has the option of being "sunk in place" rather than sailing out, plaintiffs doubt that even defendants would attempt to suggest to this Court that it would choose to "sink" its multi-million dollar boat with millions of dollars of gaming equipment to avoid setting sail.

The M/V BOOMTOWN BELLE has a fully operational diesel engine, boat crew, navigation equipment, lifeboats, life rafts, hull exams and meets all requirements of the U.S. Coast Guard to maintain a current vessel license. *See* U.S. Coast Guard Certificate of Inspection, Appendix at App. 22. It has carried passengers and sailed countless times. It is required to set sail upon "gale force winds" during a hurricane. Its ability to sail is not only a "practical possibility," but given the geographic location of the M/V BOOMTOWN BELLE in southeast Louisiana (just adjacent to New Orleans), just miles from the Gulf of Mexico, and hundreds of feet from the Mississippi River, it is a "practical probability" that "gale force winds" will enter the Gulf of Mexico pursuant to a hurricane, and the M/V BOOMTOWN BELLE will *have* to set sail. Further the M/V BOOMTOWN BELLE can cut its moorings and set sail within approximately 4 hours, if not sooner.

Defendants maintain a strict policy of offering every passenger an alcoholic beverage free, or at very reduced prices, every 20 minutes, encouraging intoxication well over the legal limit, in order to keep their passengers "happy". *See* Deposition of D. Davis, M/V BOOMTOWN BELLE Food and Beverage Manager, Appendix at App. 40. Obviously, the intent is to pry passengers with liquor in order to impair their judgment over spending money, with little to no concern for the safety and/or well-being of the passenger – or any innocent bystander on the roadway upon the passenger's drunken and impaired

return home. On July 20, 2007, plaintiff Jeffrey Bourgois entered the defendants' boat sober and was served cocktails pursuant to the above policy. Approximately 4 hours later, plaintiff exited the boat to go home, whereupon he was killed ¼ of a mile from the boat in a car accident as a result of his severe intoxication. Plaintiffs filed this instant action pursuant to the Admiralty Extension Act against the defendant M/V BOOMTOWN BELLE.

REASONS FOR GRANTING THE WRIT

The Admiralty Extension Act provides that

> admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, **caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land**.

Admiralty Extension Act, 46. U.S.C. § 30101 (emphasis added). The United States Supreme Court explained that "[t]he purpose of the Act was to end concern over the sometimes confusing line between land and water, by investing admiralty with jurisdiction over **'all cases' where the injury was caused by a ship or other vessel on navigable water, *even if such injury occurred on land.*"** *Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 532, 534, 115 S.Ct. 1043, 1048-49 (1995) (emphasis

added). *Grubart* held that admiralty jurisdiction exists pursuant to the Admiralty Extension Act when a two-prong test is satisfied:

a) **"Location":** A court applying the location test must determine whether the tort occurred on navigable waters or whether injury suffered on land was caused by ***a vessel on navigable water***;

b) **"Connection with maritime activity"** – i) A court, first, must 'assess the general features of the type of incident involved' to determine **whether the incident has 'a *potentially* disruptive impact on maritime commerce' *and*** ii) a court must determine whether the 'general character' of the 'activity giving rise to the incident' **shows a 'substantial relationship to traditional maritime activity'**.

Grubart, 513 U.S. at 534, 115 S.Ct. at 1048 (emphasis added).

I. THE M/V BOOMTOWN BELLE SATISFIES THE "LOCATION" TEST BECAUSE IT IS A "VESSEL ON NAVIGABLE WATER."

In 2005, this Court held that **the definition provided in 1 U.S.C. §3 *is the applicable definition for "vessel" status for general maritime law***. *Stewart v. Dutra Construction Co.,* 543 U.S. 481, 489, 125 S.Ct. 1118, 1124 (2005) ("Section 3 merely codified the meaning that the term 'vessel' had acquired in general maritime law") (citing

Benedict on Admiralty, §165 (rev. 7th ed. 2004)) (emphasis added). *See also Board of Commissioners of Orleans Levee District v. M/V Belle of Orleans*, 535 F.3d 1299, 1309 (11th Cir. 2008) ("*Stewart's* core holdings were that 1 U.S.C. §3 is a codification of the general maritime law and provides the definition of 'vessel' throughout the United States Code").

Section 3 provides that **"[t]he word 'vessel' includes every description of watercraft or other artificial contrivance used, *or capable of being used*, as a means of transportation on water."** 1 U.S.C. §3 (emphasis added). *Stewart* emphasized that "vessel" under 1 U.S.C. §3 "sweeps broadly," and does not require that the watercraft be "in navigation" at the time of the injury. *Stewart*, 543 U.S. at 494-95, 125 S.Ct. at 1127-28. A finding of "vessel" status

> requires only that a watercraft be ***'used or capable of being used, as a means of transportation on water'*** to qualify as a vessel. **It does not require that a watercraft be used primarily for that purpose.**
>
> * * *
>
> Also, a watercraft need not be in motion to qualify as a vessel. . . .

Stewart, 543 U.S. at 495, 125 S.Ct. at 1128 (emphasis added) (holding that a work platform with no means of self-propulsion was a "vessel"). *See also BELLE OF ORLEANS*, 535 F.3d at 1306 ("[o]ur determination

[that] the [Louisiana riverboat casino] BELLE OF ORLEANS is a 'vessel' is guided by the Supreme Court's decision in *Stewart*"); *Holmes v. Atlantic Sounding Co.*, 437 F.3d 441, 448 (5th Cir. 2006) (under *Stewart*, as long as a water-borne structure is *practically capable* of being used for transportation on navigable waters, it is a "vessel").

Because "a watercraft need not be in motion to qualify as a vessel under §3 [it] does not pass in and out of Jones Act coverage depending on whether it was moving at the time of the accident." *Stewart*, 543 U.S. at 495, 125 S.Ct. at 1128. "Rather, the point was that structures may lose their character as vessels if they have been withdrawn from the water for extended periods of time." *Id.* This Court explained that

> [t]he 'in navigation' requirement is an ***element*** of the vessel status of a watercraft. It is relevant to whether the craft is 'used, or capable of being used' for maritime transportation. A ship long lodged in a drydock or shipyard can again be put to sea, no less than one permanently moored to shore or the ocean floor can be cut loose and made to sail. The question remains in all cases whether the watercraft's use 'as a means of transportation on water' is a practical possibility or merely a theoretical one. In some cases that inquiry may involve factual issues for the jury.

Id. (emphasis added). Pursuant to these factors, *Stewart* held that a floating platform which had no engine and had to be towed to move long distances was a "vessel". *Stewart*, 543 U.S. at 490-97, 125 S.Ct. at 1124-29.

Pursuant to *Stewart*, a Louisiana riverboat casino indefinitely moored dockside was held to be a "vessel" under federal admiralty jurisdiction. *Belle of Orleans,* 535 F.3d at 1313 (citing *Stewart*, 543 U.S. at 494, 497, 125 S.Ct. at 1118). The *Belle of Orleans* court recognized that

> ***Stewart's* core holdings were that ... a 'vessel' is any watercraft practically capable of maritime transportation, regardless of its primary purpose or state of transit[;] *the focus of the 'vessel' inquiry is the craft's capability, not its present use or station.*** ...
>
> * * *
>
> **The owner's intentions with regard to a boat are analogous to the boat's 'purpose,' and *Stewart* clearly rejected any definition of 'vessel' that relies on such a purpose.** Further, such a test is incompatible with the Supreme Court's focus on providing uniformity within admiralty jurisdiction.

Id. at 1310-11. *See also Davis v. Missouri Gaming Company d/b/a Argosy Riverside Casino*, 51 S.W.3d 168, 174 (defendant's "intention to permanently moor

the Argosy IV[, a riverboat casino,] is not determinative of whether the Argosy IV remains a vessel in navigation," and remanded for further fact inquiry).

In *Belle of Orleans*, the Louisiana riverboat casino had been moored dockside since 2001 when Louisiana law changed to require such boats to remain dockside while "gaming." *Id.* at 1303-04. The court found that

> [w]hen the BELLE OF ORLEANS began operating dockside in 2001, her owners added steel cables to her mooring system and attached electrical, computer and phone cables from a shore-side source. * * * The affidavit of the . . . chief engineer . . . characterized [her] . . . as 'permanently moored' and 'out of operation.' * * * The Coast Guard reduced the BELLE OF ORLEANS' manning requirements based upon her owner's 'stated intent to operate in a continuously moored status' [and] limited [her] to 'permanently moored operation' but did not prohibit [her] from navigating in the future.
>
> The BELLE OF ORLEANS was subject to Coast Guard certification and inspection. * * * In order to be eligible for Coast Guard documentation, the Belle of Orleans must be a "vessel,' defined by 46 C.F.R. sec. 67.3 as 'every description of watercraft or other contrivance capable of being used as a means of transportation on water, but does not include aircraft.'

* * *

> The BELLE OF ORLEANS maintained a captain and a crew . . . and maintained her engines, generators and equipment in working order. . . .

Id. at 1303-04. During Hurricane Katrina, the BELLE OF ORLEANS broke free of her moorings and caused damage to plaintiff's marina. *Id.* at 1304.

In addressing the defendant's argument that it was not a vessel because it had remained dockside since 2001 with the change in Louisiana law, the court explained that the M/V BELLE OF ORLEANS remained a vessel *after* 2001, because **"the [boat] was [not] rendered practically incapable of transportation or movement when her owner moored her in 2001. * * * [A]ll her crew would have had to do was unmoor her cables and start up her engine and [she] would have been able to sail".** *Id.* at 1311-12 (emphasis added) (citing *Stewart*, 543 U.S. at 494, 125 S.Ct. at 1118). The court also noted that she was "towed" to Alabama for repairs, which also met the "vessel" test for admiralty jurisdiction. *Id.* The court explained that

> *Stewart* . . . stated a watercraft is not 'capable of being used' for maritime transport in any meaningful sense if it has been permanently moored or otherwise rendered practically incapable of transportation or movement.
>
> Both the Fifth and the Seventh Circuits have addressed the meaning of 'permanently

> moored or otherwise rendered practically incapable of transportation or movement' post-*Stewart* [citing] *De La Rosa v. St. Charles Gaming Co.*, 474 F.3d 185 (5th Cir. 2006) and *Tagliere v. Harrah's Ill. Corp.*, 445 F.3d 1012 (7th Cir. 2006). Under the language of *Stewart*, however, we find that neither court articulates an appropriate test. **Both focus on the intent of the shipowner rather than whether the boat has been 'rendered practically incapable of transportation or movement.'** ***The owner's intentions with regard to a boat are analogous to the boat's 'purpose', and Stewart clearly rejected any definition of 'vessel' that relies on such a purpose. Further, such a test in incompatible with the Supreme Court's focus on providing uniformity within admiralty jurisdiction.*** **Under *Tagliere* and *De La Rosa*, a boat may enter and leave admiralty jurisdiction on the basis of state law and the individual thoughts of the boat owner. . . . With this in mind,** ***we will place our primary focus, as Stewart directs, on whether the BELLE OF ORLEANS was 'rendered practically incapable of transportation or movement' when her owner moored her in 2001.***

Id. at 1311-12 (emphasis added).[5]

---

[5] Further, the *Belle of Orleans* court found that it was bound by a previous U.S. Fifth Circuit decision which found that

(Continued on following page)

Similarly, the United States Seventh Circuit ruled that the defendant Illinois riverboat casino remained a "vessel" despite that it had been moored to a pier for over two (2) years pursuant to Illinois law allowing it to conduct gaming activities "dockside." *Tagliere v. Harrah's Illinois Corp.*, 445 F.3d 1012, 1013-14 (7th Cir. 2006). In *Tagliere*, a casino patron fell off a stool and injured herself, suing in admiralty. In evaluating the claim, the court explained that

> [t]he accident in our case had nothing to do with the fact that the casino was on a boat afloat on a navigable stream rather than sitting on dry land. * * * There is ... commonsense appeal to the district court's ruling that the suit is not within the admiralty jurisdiction. **But the most important requirement of a jurisdictional**

---

a Navy salvage vessel that had been converted into a shrimp processing plant with no engine or crew, received all utilities shoreside and was moored to a dock by steel cables, was nonetheless a "vessel" because it was "capable of navigation". *Belle of Orleans,* 535 F.3d at 1306, 1309 (citing *Pleason v. Gulfport Shipbuilding Corp.*, 221 F.2d 621 (5th Cir. 1955).[5] The *Belle of Orleans* court rejected the defendant's argument that it was bound by the pre-*Stewart* Fifth Circuit decision "*Pavone,*" which held that a Mississippi barge casino never constructed for navigation was not a "vessel", because that case involved a Jones Act claim and because the riverboat casino in *Pavone* was factually different from the BELLE OF ORLEANS. *Id.* at 1307-09 (citing *Pavone v. Mississippi Riverboat Amusement Corp.*, 52 F.3d 560 (5th Cir. 1995)).

> **rule is not that it appeal to common sense but that it be clear.**

Id. at 1013 (emphasis added). In finding jurisdiction under the Admiralty Extension Act, the court explained that ***"there has been no showing that the boat in our case, though stationary for the past two years, is permanently moored in the Court's sense (disabled from sailing)" and thus is the equivalent of a landfill.*** *Id.* at 1014 (emphasis added) (citing *Stewart*, 543 U.S. 481, 125 S.Ct. 1118 (2005)). *See also Booten v. Argosy Gaming Company d/b/a Alton Belle Casino*, 848 N.E.2d 141, 146 (Ill. 3d Cir. 2006) (pursuant to *Stewart,* defendant riverboat casino is a "vessel," despite that it "stopped cruising [in] 1999, the day after the law changed to allow gambling to occur [dockside] and has no plans to resume cruising, [because] [t]he Alton Belle is clearly **capable** of maritime transportation") (emphasis added).

The U.S. Fifth Circuit recognized that *Stewart* **"significantly enlarged the set of unconventional watercraft that are vessels,"** and **"no longer required an inquiry into the purpose for which a watercraft is constructed or the business in which the craft is engaged; rather *the only inquiry is whether the craft is 'practically capable of being used for transportation.'"***) *Holmes,* 437 F.3d at 448 (citing *Stewart*, 543 U.S. at 481) (emphasis added). The *Holmes* court interpreted:

> **[under] "pre-*Stewart* 'vessel' jurisprudence** . . . the term 'vessel' connotes a structure designed or used for **'transportation for passengers, cargo or equipment** from place to place across navigable waters. 'As a general principle, **where the vessel status of an unconventional craft is unsettled, it is necessary to focus upon the purpose for which the craft is constructed and the business in which it is engaged.'**
>
> * * *
>
> **[However, *under post*]-*Stewart*, *as long as a water-borne structure is practically capable of being used for transportation on navigable waters, it is a 'vessel'.*** As noted, *Stewart* has significantly enlarged the set of unconventional watercraft that are vessels under the Jones Act and the LHWCA [to be] ***any watercraft practically capable of maritime transportation*, regardless of its primary purpose *or state of transit at a particular moment*.**

Id. at 446, 448 (emphasis added). *See also Bunch v. Canton Marine Towing Co., Inc.*, 419 F.3d 868 (8th Cir. 2005) ("[t]he *Stewart* Court . . . specifically eschewed tests for vessel status focused on either a craft's 'primary purpose' or whether the craft is in 'actual transit' at the time of an accident . . . and focus instead on whether the [structure] was 'used, or capable of being used, as a means of transportation on water' ").

Thus, pursuant to *Stewart*, the *Holmes* court reversed an earlier decision wherein it found that a barge was *not* a "vessel," and found that the barge at issue before it *was* a vessel. *Id.* at 443-44, 448-49 (5th Cir. 2006) (emphasis added) (citing *Stewart*, 543 U.S. at 481).[6] Yet, despite the United States Fifth Circuit's clear analysis of the *Stewart* decision above, it nevertheless held that riverboat casinos are *not* vessels, citing *Pavone*, 52 F.3d at 560. *De La Rosa*, 474 F.3d at 186. The Court found that "although the Crown Casino was still capable of sailing, such a use was merely theoretical, because "defendants do not intend to use it as [a seagoing vessel]. *Id. See also Pavone*, 52 F.3d at 569 ("there can be little doubt that indefinitely moored, shore-side, floating casinos, such as the BILOXI BELLE, must be added to that list [of non-vessels]").

In the case sub judice, the Louisiana Fifth Circuit recognized that "for general maritime law to apply,

---

[6] Even pre-*Stewart*, various unconventional structures were held to be "vessels" despite that they had no engines, could not sail, and were moored to a dock, such as houseboats, work platforms and dry-docked boats. *See, e.g.*, *Pleason v. Gulfport Shipbuilding Corp.*, 221 F.2d 621 (5th Cir. 1955) (navy ship converted into shrimp processing plant that "had no motive power of its own, no steering mechanism, but . . . was capable of being towed" was a "vessel"); *Jones v. One Fifty Foot Gulfstar Motor Sailing Yacht*, 625 F.2d 44, 47 (5th Cir. 1989) (yacht test-sailed then placed in dry storage was "vessel"); *M/V Marifax v. McCorry*, 391 F.2d 909, 910 (5th Cir. 1968) ("even fifteen years of resting inertia does not necessarily destroy navigability"); *Miami River Boat Yard, Inc. v 60' Houseboat*, 390 F.2d 596, 597 (5th Cir. 1968) (houseboat with no motive power and must be towed is a vessel).

the evidence must reflect that the vessel in question was in navigation ***or capable of navigation***." *See* Opinion at 3, attached hereto as Appendix Document "2" (emphasis added). The Louisiana Fifth Circuit further found that the M/V BOOMTOWN BELLE "is permanently attached to land by 'dolphins welded to steel pilings' [and] receives utilities from 'land-based sources,' which are fixtures permanently attached to the vessel". *See* Louisiana Court of Appeal for the Fifth Circuit Opinion at 3, Appendix at App. 1. The court concluded that the BOOMTOWN BELLE had been "permanently moored or otherwise rendered incapable of transportation or movement" since 2001, and that "a watercraft is not capable of being used for maritime transport in any meaningful sense if it has been permanently moored or otherwise rendered incapable of transportation or movement."[7] *Id.* at 3. (citing La. Rev. Stat. 27:65(B)(1)(c)) and *Stewart*, 543 U.S. at 494, 125 S.Ct. at 1127). Thus, the Louisiana Fifth Circuit found that the M/V BOOMTOWN BELLE is no longer "capable of navigation", which

---

[7] Oddly, the court incorrectly found that "[t]here is no dispute that the Boomtown casino is located on a barge, which is permanently moored to a dock." *Id.* at 3. First, the M/V BOOMTOWN BELLE is ***NOT*** "located on a barge," nor do even defendants contend such a thing! Rather, the BOOMTOWN BELLE was constructed as, and remains, a fully functioning vessel with diesel engines, a captain, a crew, and has sailed countless times with hundreds of passengers. Louisiana law **specifically prohibits** riverboat casinos to be located on barges. *See* La. Rev. Stat. 27:44(23); Louisiana House Bill No. 2022, Appendix at App. 28. Authored by Rep. Hunt Downer (rejected) (Rep. Downer attempted to allow riverboat casinos to be located on ***barges***; the legislature specifically rejected this proposal).

simply is not true – factually or legally – and is in direct conflict with the United States Supreme Court's decision in *Stewart* as well as the United States Court of Appeals decisions in *Belle of Orleans* and *Tagliere*.

First, ***all Louisiana casino riverboats must be capable of navigation or they lose their gaming license***. *See* La. Rev. Stat. 27:44(23). The M/V BOOMTOWN BELLE II was ***specifically built for navigation***, as it was built when Louisiana law ***required*** riverboat casinos to sail in order to maintain a gaming license. It was built with, and continues to maintain pursuant to law, a fully operational diesel engine, boat crew, navigation equipment, lifeboats, life rafts, hull exams and meets all requirements of the U.S. Coast Guard to maintain a current vessel license. In fact, **defendants do not even dispute that the M/V BOOMTOWN BELLE routinely carried passengers and sailed, or that it *could* sail as of this moment if it so desired**. Thus, the appellate court below wrongfully concluded that the M/V BOOMTOWN BELLE has been "otherwise rendered incapable of transportation or movement" simply because it is moored to a dock. In fact, **under the Fifth Circuits' logic, *any* boat which is docked at a marina which could set sail within a matter of hours of preparation is no longer a "vessel" under admiralty law.**[8] This simply is

---

[8] Notably, *all* boats, pleasure and commercial, which are docked receive "shoreside" utilities such as electricity, and such land-based utilities do not render the boat "incapable of transportation".

(Continued on following page)

incongruent with uniform federal admiralty law which routinely holds that even pleasure boats docked at a marina are "vessels" for jurisdiction thereunder.

Further, the M/V BOOMTOWN BELLE is required to move upon gale force winds in the Gulf of Mexico upon a hurricane. Thus, it is a probability, regardless of the owners' intent or desire, that the boat will set sail at the next hurricane season. *See* Letters from U.S. Coast Guard, Appendix at App. 16, 37; U.S. Army Corps of Eng. Team New Orleans website, Appendix at App. 19.

B. THE M/V BOOMTOWN BELLE HAS A "CONNECTION WITH MARITIME ACTIVITY."

In *Grubart*, the U.S. Supreme Court evaluated two factors when deciding whether a watercraft has a "connection with maritime activity": a) whether the incident involved had potential to disrupt maritime commerce; and b) whether the general character of the activity of the watercraft shows a substantial relationship to maritime activity. *Grubart*, 513 U.S. at 539, 115 S.Ct. at 1051. Applying that test, *Grubart* found admiralty jurisdiction over defendant's pile-driving **from a crane** which rested on a stationary

---

Again, if the Fifth Circuit's logic is adopted, then all pleasure boats, for example, which rest at the marina most of the winter and are attached to dockside electricity, are no longer "vessels". Regarding the BOOMTOWN BELLE's mooring system, the "weld attached to steel pilings" serves as a ***stabilizing*** factor for the boat, not so that it can avoid federal admiralty law. These moors can be cut, just as other boats are unmoored from their dock, in short time and the boat can sail in a matter of hours.

barge on a navigable waterway. *Id.* at 548, 1055. Because the crane caused damage to a structure beneath a riverbed which required the waterway to be closed to repair the damaged structure, the Court found that the incident had the *potential* to disrupt maritime commerce. Further, because "the wrong here involves the negligent operation of a vessel on navigable waters," the court found a "sufficient nexus to traditional maritime activity."

a. INTOXICATED PASSENGERS ON A SHIP SUCH AS THE M/V BOOMTOWN BELLE HAVE THE POTENTIAL TO DISRUPT MARITIME ACTIVITY.

In determining whether the incident involved had "potential to disrupt maritime commerce," the *Grubart* court noted this was a ***theoretical concept***, where the court should determine if ever the tort *could* disrupt maritime commerce, not whether in the particular case at bar it actually *did*. *Id.* at 538 (citing *Sissone v. Ruby*, 497 U.S. at 363, 110 S.Ct. at 2896). *See also Weaver v. Hollywood Casino-Aurora, Inc.*, 255 F.3d 379, 386 (7th Cir. 2001) ("[t]he key is not whether the incident affected maritime commerce, but where it *could* do so," finding that injured employee aboard riverboat casino disrupts its participation in maritime commerce).

Thus, the United States Seventh Circuit found that the riverboat casino patron's injuries in falling off her gambling stool was within admiralty jurisdiction, because "even an injury to a passenger could have a disruptive effect, if the boat had to make an unscheduled stop to get him to a hospital (not that

that could have happened here, since the boat was moored), or if the injury revealed a dangerous condition that required time-consuming repairs." *Tagliere,* 445 F.3d at 1015.

The Supreme Court of Iowa held that when the sale and service of alcohol to an intoxicated adult occurred on a vessel capable of transporting passengers in a navigable waterway, the *Grubart* "location" test for concurrent admiralty jurisdiction is satisfied. *Horak v. Argosy Gaming Co.,* 648 N.W.2d 137, 146 (Iowa 2002) (citing *Grubart*, 513 U.S. at 534, 115 S.Ct. at 1035). In *Horak,* a riverboat casino patron died due to intoxication in a single vehicle collision after being served alcohol by casino employees. *Id.* at 146. The *Horak* Court held that the incident satisfies the two prongs of *Grubart's* "connection" test as the alleged wrong had a "potentially disruptive impact on maritime commerce" and "shows 'a substantial relationship to traditional maritime activity.'" *See also Duluth Superior Excursions,* 623 F.2d 1251, 1252-53 (8th Cir. 1980) (carrying passengers for hire, supervising their alcohol consumption and providing safe means of disembarking all "related to" traditional maritime activity); *Bay Casino, LLC v. M/V Royal Empress,* 199 F.R.D. 464 (E.D.N.Y. 1999) (riverboat casino which provided alcohol to passenger who then injured persons in another car on his way home "may well have a disruptive effect on maritime commerce").

Similarly, another Louisiana riverboat casino which provided excessive amounts of alcohol to a patron who then killed several individuals in another car on his way home, including an infant, was held to

have the potential to disrupt maritime commerce. *Young, et al. v. Players Lake Charles, LLC,* 47 F.Supp.2d 832 (S.D. Tx. 1999) (citing *Their v. Lykes Bros., Inc.,* 900 F.Supp. 864, 866 (S.D. Tx. 1995)). In *Young*, the court wisely explained:

> [w]hile Defendants are nominally in the business of selling alcohol, it is clear that alcohol sales are merely incidental to **Defendants' primary purpose – the creation of a party atmosphere in which patrons are encouraged to freely spend their money gambling and then hit the road when they have exhausted their funds, regardless of their physical condition. Defendants are essentially giving alcohol away in express furtherance of that goal, arguably under the smug misconception that Louisiana law insulates them from the predictable and tragic consequences.**

Id. at 837 (emphasis added). The court instructed that "describ[ing] the incident on an 'intermediate level of possible generality,' . . . this incident can be described as a potentially negligent condition affecting passengers aboard the vessel. It is not difficult to imagine a slightly different scenario from the case at bar in which an intoxicated passenger falls down a stairway or into the water." *Id.* at 835 (citing *Meyer v. Carnival Cruise Line* [1994 WL 8320006] (N.D. Cal. 1994) at *1) (admiralty jurisdiction existed over action where plaintiff consumed too much alcohol aboard cruise ship and fell off a stairway, as such

incident *could* have a disruption of maritime commerce if rescue crews had to locate and save the passenger or search for his body). *See also Quinn v. St. Charles Gaming Co., Inc.*, 815 So.2d 963, 967 (La. App. 3d Cir. 2002) ("provision of alcohol to passengers on board a vessel could *possibly* have a disruptive effect on maritime commerce such as where a large party of passengers become inebriated injuring themselves or other patrons or fall overboard causing a disruption to maritime commerce due to search and rescue operations" and found jurisdiction under the Admiralty Extension Act).

b. THE M/V BOOMTOWN BELLE IS CLOSELY RELATED TO ACTIVITY TRADITIONALLY SUBJECT TO ADMIRALTY LAW.

"[A]s long as . . . the putative tortfeasor was engaged in traditional maritime activity, the allegedly wrongful activity will "involve" such traditional maritime activity." *Grubart,* 513 U.S. 527, 541, 115 S.Ct. 1043, 1052. Thus, "[n]avigation of boats in navigable waters clearly falls within substantial relationship [and] ***storing them at a marina on navigable waters is close enough***, whereas in flying an airplane over the water [or] in swimming, the relationship is too attenuated." *Id.* at 540 (emphasis added) (citations omitted).

In Missouri, a riverboat casino continuously moored dockside on the Mississippi River and carrying

2500 passengers was struck by three barges which had just hit a nearby bridge, setting the riverboat casino adrift. *See* CNN story, 4/5/98 at www.rbbi.com. The riverboat casino, which had no motor and had been moored "for decades", floated downstream for approximately 500 feet before and nearly ran into another bridge, was rescued by a towboat, and passengers reported "freaking out" and "looking for anything that would float in the water in case we had to jump off". *Id.* Clearly, even a continuously moored riverboat casino has a connection to maritime activity.

In Louisiana, the *Quinn* court held that riverboat casinos in Lake Charles have "a substantial relationship to a traditional maritime activity" such to provide recovery for plaintiffs' injuries. *Quinn*, 815 So.2d at 967-68. In that case, a passenger on board two riverboat casinos in the Lake Charles area "consumed large amounts of alcoholic beverages" "which were provided free of charge", then drove home, killing the driver of an oncoming car. *Id.* at 965. In applying admiralty jurisdiction to plaintiff's claims, the court held "[w]e have no difficulty in finding that the general character of the activity at issue shows a substantial relationship to a traditional maritime activity. The duties owed by vessel owners to their passengers have long been found a traditional maritime concern." *Id.* at 968. *See also Bay Casino*, 199 F.R.D. at 466 (regarding plaintiffs' injuries suffered after intoxicated riverboat casino patron driving home struck their car, "there is a 'substantial

relationship to traditional maritime activity' as courts have recognized that torts aboard entertainment vessels, including cruise ships, sightseeing ships, and casino boats satisfy the traditional maritime activity requirement") (citing *Young*, 47 F.Supp.2d at 835; *Palmer v. Fayard Moving & Transportation Corp.*, 930 F.2d 437, 441 (5th Cir. 1991); *Butler v. American Trawler Co.*, 887 F.2d 20, 21-22 (1st Cir. 1989); *Carey v. Bahama Cruise Lines*, 864 F.2d 201, 207 (1st Cir. 1988); *Luby v. Carnival Cruise Lines*, 633 F.Supp. 40, 41 n.2 (S.D. Fl. 1986)).

In the case sub judice, the United States Army Corps of Engineer clearly recognized the impact on maritime commerce the M/V BOOMTOWN BELLE could have, which is why it is requiring it to be removed from the Harvey Canal during a hurricane. This is not a "freak" case of a plane, a swimmer, or rear-end collision while waiting for a ferry, which was what was intended to be expelled from admiralty jurisdiction by usage of the "connection" test. Simply, this is a vessel in navigable waters, which is closely related to traditional maritime activity. The M/V BOOMTOWN BELLE easily satisfies the second *Grubart* prong for admiralty jurisdiction as it has a "connection with maritime activity." The incident at issue, providing excessive amounts of alcohol to patrons, has the potential to disrupt maritime commerce.

CONCLUSION

In conclusion, plaintiffs' claims fall under admiralty jurisdiction pursuant to the Admiralty Extension Act. The defendant M/V BOOMTOWN BELLE satisfies both prongs for finding admiralty jurisdiction – "location" plus "connection to maritime activity". As for location, the defendant is a "vessel in navigable waters", as it is a watercraft legally required by Louisiana law to remain "capable of navigation" lying afloat in the Harvey Canal, a navigable waterway. The M/V BOOMTOWN BELLE's ability to sail is a "practical possibility and not merely theoretical", as not only is it capable of navigation, but it is required to set sail upon "gale force winds" during a hurricane. As for "connection to maritime activity," the provision of alcohol has the "potential to disrupt maritime activity" such as if a patron were to fall overboard or otherwise cause the navigable waterway to be closed for a period of time; additionally, the duties owed by a vessel to its patrons have long been held to be a traditional maritime concern. Wherefore, plaintiffs, Jeffrey C. Bourgeois, individually and on behalf of Dale Bourgeois, Mark J. Bourgeois, individually and on behalf of Dale Bourgeois, Rebekah L. Bourgeois, individually and on behalf of Dale Bourgeois, pray that their writ application be granted, the decision of the Louisiana Supreme Court and/or the Louisiana Fifth Circuit Court of Appeal be reversed, and that the decision of the district court for the 24th Judicial District Court be reinstated.

Plaintiffs further pray for all other general and equitable relief to which they are entitled and which this Honorable Court is competent to grant.

Respectfully submitted,

HAILEY, MCNAMARA, HALL, LARMANN & PAPALE, L.L.P.

JOHN F. YOUNG, JR.
One Galleria Boulevard,
Suite 1400
P.O. Box 8288
Metairie, Louisiana 70011
(504) 836-6500
Counsel for Petitioners, Jeffrey C. Bourgeois, Ind. and on behalf of Dale Bourgeois, Mark Bourgeois, Ind. and on behalf of Dale Bourgeois, Rebekah L. Bourgeois, Ind. and on behalf of Dale Bourgeois and Renee B. Bourgeois

JULIE QUINN
419 Northline
Metairie, Louisiana 70005
(504) 322-2592
Counsel for Petitioners

L. ERIC WILLIAMS, JR.
3021 35th Street, Suite B
Metairie, Louisiana 70001
(504) 832-9898
Counsel for Petitioners

APPENDIX

Page

Opinion of the Fifth Circuit Court of Appeal .....App. 1

Trial Court's Judgment & Reasons for Judgment.....App. 9

Denial of Plaintiff's Application for Supervisory Writ to the Louisiana Supreme Court.....App. 12

Judgment – 14th JDC for the Parish of Calcasieu – *Breaux v. St. Charles Gaming* .....App. 14

Letter from Capt. E.M. Stanton to Broussard .....App. 16

U.S. Army Corps of Eng. Team New Orleans Website Home Page .....App. 19

Certificate of Inspection .....App. 22

La. House Bill 2022 (HLS4-01-2770) authored by Rep. Hunt Downer .....App. 28

Lt. Commander Keel's Response to Freedom of Inf. Act Request 1/14/09.....App. 31

Lt. Commander Keel's Response to Freedom of Inf. Act Request 1/7/09.....App. 33

Defendants' Opposition to Plaintiff's App. for Supervisory Writs to LA Supreme Court.....App. 35

Letter from U.S. Coast Guard to State of Louisiana, Ms. E.A. Wills, P.E.....App. 37

Depo. of D. Davis .....App. 40

App. 1

Application For Writs

No. 09-C-243

COURT OF APPEAL, FIFTH CIRCUIT

STATE OF LOUISIANA

APR-1 2009

/s/ Mary Legnon
Deputy Clerk

JEFFREY C. BOURGEOIS, INDIVIDUALLY AND ON BEHALF OF DALE BOURGEOIS, MARK BOURGEOIS, INDIVIDUALLY AND ON BEHALF OF DALE BOURGEOIS, REBEKAH L. BOURGEOIS, INDIVIDUALLY AND ON BEHALF OF DALE BOURGEOIS AND RENEE B. BOURGEOIS

VERSUS

BOOMTOWN, L.L.C. OF DELAWARE, PINNACLE ENTERTAINMENT, INC. ORE, M/V BOOM TOWN BELLE II AND LOUISIANA A-1 GAMING, A LOUISIANA PARTNERSHIP IN COMMENDAM

IN RE BOOMTOWN, L.L.C. OF DELAWARE, PINNACLE ENTERTAINMENT, INC. OF DELEWARE [sic], M/V BOOMTOWN BELLE II AND LOUISIANA A-1 GAMING, A LOUISIANA PARTNERSHIP IN COMMENDAM

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE JUNE B. DARENSBURG, DIVISION "C", NUMBER 651-937

Attorneys for Relator:

Daryl A. Higgins
A. Mark Flake
Attorneys at Law
401 Whitney Avenue
Suite 500
Gretna, LA 70056
(504) 362-2466

Attorneys for Respondent:

Lynn E. Williams, Jr.
Attorney at Law
3021 35th Street
Suite B
Metairie, LA 70001
(504) 832-9898

John F. Young, Jr.
Attorney at Law
P. O. Box 8288
Metairie, LA 70001
(504) 836-6571

WRIT GRANTED; JUDGMENT RENDERED

(See attached)

Gretna, Louisiana this 21st day of May, 2009.

JEFFREY C. BOURGEOIS, INDIVIDUALLY AND ON BEHALF OF DALE BOURGEOIS, MARK BOURGEOIS, INDIVIDUALLY AND ON BEHALF OF DALE BOURGEOIS, REBEKAH L. BOURGEOIS, INDIVIDUALLY AND ON BEHALF OF DALE BOURGEOIS AND RENEE B. BOURGEOIS

VERSUS

BOOMTOWN, L.L.C. OF DELAWARE, PINNACLE ENTERTAINMENT, INC. ORE, M/V BOOM TOWN BELLE II AND LOUISIANA A-1 GAMING, A LOUISIANA PARTNERSHIP IN COMMENDAM

NO. 09-C-243

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

WRIT GRANTED; JUDGMENT RENDERED

Defendants, Boomtown, LLC of Delaware, Pinnacle Entertainment, Inc. of Delaware, M/V BOOMTOWN BELLE II, and Louisiana A-1 Gaming, a Louisiana Partnership in Commendam (hereinafter "Boomtown") filed a Motion for Partial Summary Judgment requesting a dismissal of claims asserted under general maritime law stemming from a wrongful death/survivor action filed by Jeffery [sic] C. Bourgeois, Mark J. Bourgeois, and Rebekah L. Bourgeois (hereinafter "Plaintiffs"), major heirs of Dale Bourgeois, who was killed in an alcohol-related, single vehicle accident after leaving the casino.

Plaintiffs filed a cross-motion for partial summary judgment requesting that the trial court make a finding that general maritime/admiralty law applied to their actions against Boomtown.

The trial court rendered judgment on February 12, 2009, which was signed on March 2, 2009. In that judgment, the trial court denied Boomtown's motion for partial summary judgment, and granted Plaintiffs' motion for partial summary judgment, finding that "plaintiffs' claims are well founded under the admiralty and general maritime law of the United States and further that the Admiralty Extension Act applies in this case." On April 1, 2009, Boomtown filed the instant writ application with this Court requesting supervisory review of the trial court's rulings.

We grant this writ of review to examine the trial court's rulings. Appellate courts review summary judgments *de novo* under the same criteria governing the district court's consideration of whether summary judgment is appropriate. *Industrial Indemnity Company of the Northwest v. Central National Insurance Company of Omaha*, 99-2535 (La.App. 1 Cir. 12/22/00), 775 So.2d 1246, 1250-1251, *writ denied*, 01-0225 (La. 4/12/01), 790 So.2d 1. A motion for summary judgment shall be granted only if there is no genuine issue of material fact and the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(B).

In the present case, there are no factual disputes. In reviewing legal issues, the appellate court gives no special weight to the findings of the trial court, but exercises its constitutional duty to review questions of law and renders judgment on the record. *State, Louisiana Riverboat Gaming Commission v. Louisiana State Police Riverboat Gaming Enforcement Division,* 95-2355 (La.App. 1 Cir. 8/21/96), 694 So.2d 316, 319.

For the following reasons, we make our writ peremptory and render partial summary judgment declaring that the M/V BOOMTOWN BELLE was not a "vessel" under general maritime law at the time of the accident. In order for Plaintiffs to prevail on a tort claim under the general maritime law, Plaintiffs must establish that the tort claim has a sufficient connection with maritime activity. *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 539-540, 115 S.Ct. 1043, 1051 (1995). Under *Grubart*, the tortious conduct must be "so closely related to activity traditionally subject to admiralty law that the reasons for applying special admiralty rules would apply to the suit at hand." *Id.* In the case before us, Plaintiffs allege, in their wrongful death/survivor action, that Boomtown is liable, at least in part, for their father's motor vehicle accident because Boomtown served alcohol to him, even after he was allegedly impaired, on the night of his accident. Plaintiffs have not proved that their claims are based on any traditional maritime activity as defined in the case law.

For general maritime law to apply, the evidence must reflect that the vessel in question was in navigation or capable of navigation. There is no dispute that the Boomtown casino is located on a barge, which is permanently moored to a dock located on the Harvey Canal in Harvey, Louisiana. In fact, Louisiana law now *prohibits* a casino barge from sailing if gaming activities are being conducted, and mandates that the barge remain permanently docked in order to maintain a casino license. La. R.S. 27:65(B)(1)(c).[2]

Although Plaintiffs contend that the barge is a vessel because it is in the water, Boomtown established that the barge is permanently attached to land by "dolphins welded to steel pilings." Moreover, the vessel receives utilities from "land-based sources," which are fixtures permanently attached to the vessel. Although Boomtown does possess an operable diesel engine, jurisprudence holds that permanently or indefinitely moored watercraft "as a practical matter do not remain vessels merely because of the remote possibility that they may one day sail again." *Stewart v. Dutra Construction Co.*, 543 U.S. 481, 494, 125 S.Ct. 1118, 1127 (2005). "A watercraft is 'not capable of being used' for maritime transport in any meaningful sense if it has been permanently moored or otherwise rendered incapable of transportation or movement." *Id.* Based on the foregoing, we cannot say

---

[2] La. R.S. 27:65 was amended by Act 3 of the First Extraordinary Session of 2001.

that the Plaintiffs have sufficiently disputed Boomtown's contention that the barge has not been "in navigation" since 2001. They have not established "vessel" status to trigger the application of general maritime law to this case.

Additionally, plaintiffs allege that their cause of action falls under the Admiralty Extension Act, 46 U.S.C.A. § 30101. The Admiralty Extension Act, however, does not relieve plaintiffs of the obligation of proving a sufficient connection to maritime activity. We note again that the facts neither indicate that the casino is a vessel nor establish a nexus between Boomtown's alleged conduct and traditional maritime activity. Accordingly, the Admiralty Extension Act does not apply to Plaintiffs' action.

Upon review, we find that the trial court erred in its rulings as a matter of law. For the foregoing reasons, we find that, as a matter of law, Boomtown is not a vessel in navigation. We, therefore, vacate the trial court's denial of partial summary judgment, in favor of Boomtown, grant partial summary judgment in favor of Boomtown, and dismiss Plaintiffs' claims asserted under general maritime law/admiralty jurisdiction. Furthermore, under our supervisory jurisdiction, we vacate the trial court's grant of partial summary judgment in favor of Plaintiffs for the foregoing reasons.

Gretna, Louisiana, this 21st day of May, 2009.

/s/ SMC
JUDGE SUSAN M. CHEHARDY

/s/ CEM
JUDGE CLARENCE E. MCMANUS

/s/ JGG
JUDGE JUDE G. GRAVOIS

TWENTY-FOURTH JUDICIAL DISTRICT
COURT PARISH OF JEFFERSON
STATE OF LOUISIANA

NO. 651-937 **DIVISION "C"**

JEFFREY C. BOURGEOIS, ET.AL.
VERSUS
BOOMTOWN, LLC. OF DELAWARE, ET.AL.

DATE FILED: _____ /s/ _____
DEPUTY CLERK

JUDGMENT

(Filed Mar. 2, 2009)

The Motion for Partial Summary Judgment of defendants, Boomtown, LLC of Delaware, Pinnacle Entertainment, Inc., of Delawre [sic], M/V Boomtown Belle, II, and Louisiana A-1 Gaming, a Louisiana Partnership in Commendam (hereinafter "Boomtown") and the Cross Motion for Partial Summary Judgment of plaintiffs, Jeffrey C. Bourgeois, individually and on behalf of Dale Bourgeois, Mark Bourgeois, individually and on behalf of Dale Bourgeois, Rebekah L. Bourgeois, individually and on behalf of Dale Bourgeois (hereinafter "plaintiffs") came for a hearing before Judge June Darensburg on February 12, 2009.

Present were:

1. John F. Young, Jr.
   Hailey, McNamara, Hall, Larmann
   & Papale, LLP
   Suite 1400
   One Galleria Blvd.
   Metairie, LA 70001
   Counsel for plaintiffs, Jeffrey C. Bourgeois,
   et al

2. L. Eric Williams, Jr.
   Williams Law Office, LLC
   3021 35th Street, Ste. B
   Metairie, LA 70001
   Counsel for plaintiffs, Jeffrey C. Bourgeois,
   et al

3. A. Mark Flake
   401 Whitney Avenue
   Suite 500
   Gretna, Louisiana 70056
   Counsel for defendants, Boomtown LLC
   of Delaware, *et al*

After considering the Motions, memoranda, exhibits attached thereto, and argument of counsel;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion for Partial Summary Judgment of defendants, Boomtown LLC of Delaware, *et al* is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Cross-Motion for Partial

Summary Judgment of plaintiffs, Jeffrey C, Bourgeois, *et al* is granted.

The Court held that plaintiffs' claims are well founded under the admiralty and general maritime law of the United States and further that the Admiralty Extension Act applies in this case.

Read and Rendered on February 12, 2009, Signed in Gretna, Louisiana, this 2nd day of March, 2009.

/s/ June Berry Darensburg
JUDGE JUNE BERRY DARENSBURG

The Supreme Court of the State of Louisiana

JEFFREY C. BOURGEOIS, INDIVIDUALLY AND ON BEHALF OF DALE BOURGEOIS, MARK BOURGEOIS, INDIVIDUALLY AND ON BEHALF OF DALE BOURGEOIS, REBEKAH L. BOURGEOIS, INDIVIDUALLY AND ON BEHALF OF DALE BOURGEOIS, AND RENEE B. BOURGEOIS NO. 2009-CC-1357

VS.

BOOMTOWN, L.L.C. OF DELAWARE, PINNACLE ENTERTAINMENT, INC. ORE, M/V BOOM TOWN BELLE II AND LOUISIANA A-1 GAMING, A LOUISIANA PARTNERSHIP IN COMMENDAM

IN RE: Bourgeois, Dale; Bourgeois, Jeffrey C. et al.; Bourgeois, Mark; Bourgeois, Rebekah L.; Bourgeois, Renee B.; – Plaintiff(s); Applying For Supervisory and/or Remedial Writs, Parish of Jefferson, 24th Judicial District Court Div. C, No. 651-937; to the Court of Appeal, Fifth Circuit, No. 09-C-243;

September 25, 2009

Denied.

JTK

CDK

BJJ

JPV

JLW

GGG

BJ

JENNIFER ANN BREAUX

VERSUS

ST. CHARLES GAMING COMPANY, INC., d/b/a ISLE OF CAPRI CASINO, and ZURICH AMERICAN INSURANCE COMPANY

FILED: 12-10-07

NO. 2005-000272, DIV. "D"

14th JUDICIAL DISTRICT COURT

PARISH OF CALCASIEU

STATE OF LOUISIANA

/s/ [Illegible]
DEPUTY CLERK

JUDGMENT

On November 15, 2007, the Court considered in open court with oral argument by all parties the motion for summary judgment that St. Charles Gaming Company, Inc. filed on July 20, 2007, which sought to dismiss plaintiff Jennifer Ann Breaux's general maritime law claims in this case.

Having considered all the pleadings and arguments of all counsel, the Court rules that although there were no genuine issues of material fact present concerning St. Charles Gaming Company, Inc.'s motion for summary judgment, the Court funds that for the reasons stated at the hearing on this matter the Crown casino is a vessel for purposes of the general maritime law, and St. Charles Gaming Company, Inc.'s motion for summary judgment is denied.

[Lake Charles, La., December 10, 2007.]

/s/ Robert L. Wyatt
THE HONORABLE
ROBERT L. WYATT

U.S. Department of Homeland Security

United States Coast Guard [LOGO]

201 Hammond Highway
Metairie, LA 70005
Staff Symbol: S
Phone: (504) 846-6184
Fax: (504) 846-6196

Commander
United States Coast Guard
Sector New Orleans

3006
July 13, 2009

President Aaron Broussard
Jefferson Parish
1221 Elmwood Park Blvd, Suite 1002
Jefferson, LA 70123

Dear President Broussard:

Based on events that occurred during Hurricanes Gustav and Katrina, the Coast Guard has proposed a regulation which would prohibit floating vessels from being present in the Harvey Canal, from the Lapalco Bridge to the intersection of the Harvey Canal and the Algiers Canal, before a hurricane. Simply put, prior to the arrival of storm force winds, all floating vessels must be removed from the Harvey Canal or sunk in place. This includes the Boomtown Casino. This proposal is meant to protect the Harvey Canal levee (and eventually the new floodwall) from damage by vessels that may be moved by a storm surge. The U.S. Army Corps of Engineers has requested that the Coast Guard extend the Regulated Navigation Area (RNA) to the Algiers Canal, as well.

I have taken this regulatory action because the Louisiana Office of Coastal Protection and Restoration implored the Coast Guard to require evacuation of all floating vessels from the Inner Harbor Navigation Canal area, in New Orleans. However, their letter did not make a similar request for the Harvey and Algiers Canals. I have attached their letter and the Coast Guard's response for your information. My predecessor, Captain Stroh, met with members of the Office of Coast Protection and they recommended the additional measures to protect the floodwalls of the Harvey Canal.

Their request did not include protection of the levees, but only the floodwalls, nor did they seem concerned with the potential for damage from land-based objects which might be floated by a storm surge and rammed into the levees and floodwalls. At present, only a levee provides flood protection from the waters of Harvey and Algiers Canals. Does that mean that the regulation is not required until a floodwall is built? My observation is that a levee may be damaged by floating vessels in a storm surge in the same way as a flood wall.

These restrictions and the addition of Algiers Canal will have a negative economic impact on the businesses along the Harvey and Algiers Canals. Some businesses may choose to permanently relocate from the canals. However, in my opinion, the economic impact to the businesses pales compared to the economic impact of a flooded city.

I would very much appreciate hearing your thoughts and guidance on the matter. I have discussed the matter with Mr. Gerald Sporab of the Southwest Louisiana Flood Protection Authority. I would be happy to discuss this further with you, the council, the Levee Board, or whoever may help sort this out. Please do not hesitate to contact me at 504-628-4169 or Edwin.m.stanton@uscg.mil.

Sincerely,

/s/ Edwin M. Stanton
EDWIN M. STANTON
Captain, U.S. Coast Guard
Captain of the Port,
New Orleans

[LOGO] **US Army Corps of Engineers**
Team New Orleans

West Bank and Vicinity Hurricane Protection

Official Project Name
West Bank and Vicinity, New Orleans, LA Hurricane Protection Project

Location
The project is located on the west bank of the Mississippi River in the vicinity of New Orleans and in Jefferson, Orleans and Plaquemines Parishes.

Purpose
The project will reduce the risk of storm surges from Lake Cataouatche, Lake Salvador, and other waterways leading to the Gulf of Mexico.

Status

Post-Katrina legislation authorized and funded 100-year level flood protection for the areas on the west bank of the Mississippi River. The existing WBV project features will be replaced, raised, or otherwise enhanced as necessary to achieve the increased protection. A new addition to the WBV system is the Harvey Canal floodgate, completed in August 2007, which protects residents and businesses north of the gate. To reduce the risk of storm surge to the south, floodwalls along the Harvey Canal are under construction and should be complete in 2010. Currently,

3.1 of the 3.5 miles of floodwall are under construction with a completion date scheduled for August 2010. The fourth of five Harvey Canal floodwall contracts was awarded in July 2008. The remaining contract is scheduled for award in September 2008; designs are currently being finalized.

While levees along the Algiers Canal are currently being raised to previously authorized levels, an alternative for 100-year protection is being considered. A navigable floodgate and pumping station in the Algiers Canal or Gulf Intracoastal Waterway would eliminate the need to raise significant portions of the area's levees. The best option will be selected by October 2008.

The alignments of levees and floodwalls at the Oakville eastern tie-in are currently being determined. Construction should begin in early 2009.

Fronting protection and backflow prevention will be provided at the numerous non-federal pumping stations in Orleans, Jefferson, and Plaquemines, that are within the alignment of protection to round out the 100-year level of flood protection for the West Bank.

* * *

Features

* * *

• Harvey Canal floodgate – A major surge protection feature, the floodgate provides a closure across the canal and provides hurricane surge

protection to residents and businesses north of the gate. It is located at Lapalco Boulevard and has been operational since August 2007.

• Floodwalls east of Harvey Canal – No federal protection has previously existed along the east bank of Harvey Canal, making this area the most vulnerable on the West Bank. About 3.5 miles of floodwalls and one mile of levee are under construction along the east bank of the Harvey Canal. In addition, 2.5 miles of levee on the west bank are being raised to previously authorized elevations.

• There are several proposed modifications to the protection system in the Harvey and Algiers area that could facilitate the construction of the 100-year risk reduction (1% probability) work. These include raising all of the levee and floodwalls along the canals to the higher elevations required, or construction of a new gated structure south of the existing protection system.

* * *

[LOGO] **United States of America**
Department of Homeland Security
United States Coast Guard

Expiration Date: 30 Jan 20

IMO Number:

Certification of Inspection

Vessel Name	Official Number	Call Sign	Service
Boomtown Belle II	1028319	WCX8800	Passenger (Inspected)

Hailing Port	Hull Material	Horsepower	Propulsion
Harvey LA	Steel	3600	Diesel Electric

Place Built	Delivery Date	Date Keel Laid	Gross Tons	Net Tons	Wt	Length
Braithwaite, LA United States	24Mar 1995	19May 1994	R-3615 I-1D507	R-2758 I-3152		R-318 I-318

Owner		Operator
Louisiana-I Gaming 4132 Peters Road Harvey LA 70058 United States	PO Box 1385	Westbank Riverboat Services, Inc. 4100 General Degaulle Drive Aurora Village Suite B4 New Orleans LA 70131 United States

This vessel must be manned with the following licensed and unlicensed personnel. Included in which there must be 0 certified lifeboatmen, 0 certified tankermen, 0 HSC type rating, and 0 GMDSS Operators.

1 Master	0 Ordinary Seaman
0 Chief Mate	6 Deckhands
0 2nd Mate/OICNW	1 Chief Engineer
0 3rd Mate/OICNW	0 1st Asst. Engr/2nd Engr.
0 Master & 1st Class Pilot	0 2nd Asst. Engr/3rd Engr.
0 Mate & 1st Class Pilot	0 3rd Asst. Engr.
1 Lic. Mate/OICNW	0 Lic. Engr.
0 1st Class Pilot	0 QMED/Rat
0 Radio Officer(s)	1 Oilers
0 Able Seamen/ROANW	3 Watchmen

In addition, this vessel may carry 2341 passengers, 137 other persons in crew, 0 persons in addition to crew, and no others
Total persons allowed: 2491

Route Permitted and Conditions of Operation:

– – – Rivers – – –

The conditions of operation and manning are based on the vessel being moored in the Harvey Canal. Prior to getting underway, contact OCMI New Orleans.

At all times when passengers are embarked the pilothouse shall be manned by a qualified member of the crew.

Any passenger or other person confined to the holding cell shall be under the constant supervision of a

crewmember who shall have the capability to immediately release the passenger in any emergency.

Three designated watchman shall be stationed in passenger accessible areas during the nighttime as required by 46 CFR 78.30-15. Deckhands and/or security personnel may be utilized as watchmen.

Vessel security personnel duties are limited to passenger safety, crowd control, lifesaving, and firefighting only.

Adult passengers only.

Oilers may be non-certified.

While the vessel operates in continuously-moored status at the Boomtown Dock in Harvey Louisiana the following manning modifications apply:

(1) A licensed Mate may be substituted with a Deckhand, trained as a member of the crew, provided this Deckhand receives the appropriate training. In addition, the completion and documentation of annual refresher training by this deckhand is required to maintain this reduced level of manning.

(2) The Chief Engineer may be substituted with a Qualified Member of the Engineering Department (QMED), so long as a licensed Chief Engineer remains on call at all times.

– – – Hull Exams – – –

Exam Type	Next Exam	Last Exam	Prior Exam
Drydock	22Nov2007	20Jan2006	22Nov2002
Internal Structure	22Nov2007	20Jan2006	22Nov2002

--- Inspection Status ---

Pressure vessels

Type	Location	Previous	Last	Next
Air Receiver	Manufacturer: Manchester	08Feb2000	02Feb2005	02Feb2010
Air Receiver	Manufacturer: Manchester	08Feb2000	02Feb2005	02Feb2010
Other	Manufacturer: Magnum Fire & Safety	08Feb2000	02Feb2005	02Feb2010

Lifesaving

Number of Davits/2

Lifeboat/ Raft ID	Full Wgt Test	Light Wgt Test	Falls Rnwd	Falls End/ End
1	15Feb 2005	15Feb 2005	15Feb 2005	–
2	15Feb 2005	15Feb 2005	15Feb 2005	–

--- Lifesaving Equipment ---

	Number	Persons		Required
Total Equipment for		2491	Life Preservers (Adult)	2491
Lifeboats (Total)	0	0	Life Preservers (child)	0
Lifeboats (Port)*	0	0	Ring Buoys (Total)	12
Lifeboats (Starbd)*	0	0	With Lights*	4
Motor Lifeboats*	0	0	With Line Attached*	2

Lifeboats w/Radio*	0	0	Other*	0
Rescue Boats/ Platforms	2	0	Immersion Suits	0
Inflatable Rafts	0	0	Portable Lifeboat Radios	0
Life Floats/ Buoyant App	0	0	Equipped with EPIRB? (*included in totals)	No

– – – Fire Fighting Equipment – – –

Number of Fireman Outfits/	0	Number of Fire Pumps/	2

Hose information

Qty	Diameter	Length
32	1.5	75
4	2.5	75

Fixed Extinguishing Systems

Capacity	Agent	Space Protected
225	Carbon Dioxide	Emergency Generator Room
2000	Carbon Dioxide	Main Machinery Room

Fire Extinguishers – Hand portable and semi-portable

Qty	Class Type
32	A-II
20	B-II
1	B-III
3	B-V

With this Inspection for Certification having been completed at New Orleans, LA, the Officer in Charge [Illegible]. New Orleans certified the vessel, in all respects is in conformity with the applicable vessel inspection regulations prescribed thereunder.

Annual/Periodic/Quarterly Reinspections

Date	Zone	A/P/Q	Signature
01May07	-NEWMS-	-Q	-/s/ [Illegible]
-9Aug 07	-NOLA	-Q	-/s/ [Illegible]
-6Nov7	-SECNBLA	-Q	-/s/ [Illegible]
-	-	-	-

This certificate issued by:

/s/ J Scott Paradis
J.S. PARADIS, COMMANDER, USCG
Officer in Charge, Marine Inspection

Sector New Orleans
Inspection Zone

HLSX 01-2770 **ORIGINAL**

Regular Session, 2001

HOUSE BILL NO. 2022

BY REPRESENTATIVE DOWNER

(Filed Jan. 9, 2002)

GAMBLING/RIVERBOAT: Revises the definition of a riverboat

AN ACT

To amend and reenact R.S. 27:44(23) relative to riverboat gaming; to revise the definition of a riverboat; to provide that riverboat includes a continuously moored vessel determined to be removed from navigation; to require compliance with fire safety standards; to require annual inspections; to require compliance with certain criteria; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 27:44(23) is hereby amended and reenacted to read as follows:

§44 Definitions

When used in this Chapter, the following terms shall have these meanings:

* * *

(23) "Riverboat" means a vessel which either:

(a) Carries a valid Certificate of Inspection issued by the United States Coast Guard with regard to the carriage of a minimum of six hundred passengers and crew on designated rivers or waterways within or contiguous to the boundaries of the state of Louisiana; or

(b) ~~Carries a valid Certificate of Inspection from the United States Coast Guard for the carriage of a minimum of six hundred passengers and crew.~~ Is a continuously moored vessel which has been determined by the United States Coast Guard to be continuously docked and removed from navigation.

(i) For the purposes of this Chapter, a continuously moored riverboat vessel shall not be required to carry a valid Certificate of Inspection issued by the United States Coast Guard. The continuously moored vessel shall comply with the fire safety standards (1) contained in the National Fire Protection Association, NFPA Standard 307.

* * *

(ii) The licensee at its expense shall cause to be conducted annually by a third party organization an inspection of the continuously moored riverboat vessel for compliance with the fire and safety standards contained in Item (i) of this Subparagraph in addition to such other standards as are required by the United States Coast Guard for such vessels

including but not limited to hull integrity. the inspector

* * *

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

U.S. Department of Homeland Security

United States Coast Guard [LOGO]

1615 Poydras Street
New Orleans, LA 70112
Staff Symbol: (spv)
Phone: (504) 565-5086
Fax: (504) 589-4244

Commander
United States Coast Guard
Sector New Orleans

5720
14 January 2009
2009-022

Williams Law Office, LLC
3021 35th Street
Suite B
Metairie, LA 70001
Att: Eric Williams

RE: M/V BOOMTOWN BELLE II, OFFICIAL NUMBER 1028319

Mr. Williams,

This letter is in reply to your Freedom of Information Act request of clarification dated January 08, 2009 for the M/V BOOMTOWN BELLE II, Official Number 1028319. In response to clarification to question number four, The M/V BOOMTOWN BELLE II was continuously moored in accordance with the Certificate of Inspection and the vessel could navigate or set sail as needed with the proper preparations made which includes contacting the OCMI New Orleans prior to getting underway.

If you have any questions regarding this matter, please contact LT Tonya Lim at the above telephone number.

Sincerely,

/s/ S.R. Keel

S.R. KEEL
Lieutenant Commander,
U.S. Coast Guard
Senior Investigating Officer
By direction

U.S. Department of Homeland Security

United States Coast Guard [LOGO]

1615 Poydras Street
New Orleans, LA 70112
Staff Symbol: (spv)
Phone: (504) 565-5086
Fax: (504) 589-4244

Commanding Officer
U.S. Coast Guard
Sector New Orleans

5720
07 January 2009
2009-022

Williams Law Office, LLC
3021 35th Street
Suite B
Metairie, LA 70001
Att: Eric Williams

RE: M/V BOOMTOWN BELLE II, OFFICIAL NUMBER 1028319

Mr. Brown,

This letter is in reply to your Freedom of Information Act request of October 31, 2008 for the M/V BOOMTOWN BELLE II, Official Number 1028319. In response to your question number one, the vessel had a valid Certificate of Inspection issued from the U.S. Coast Guard on July 09, 2007. In response to your question number two, it is unknown if the vessel was capable of navigation on July 09, 2007. In response to your question number three, the Harvey Canal is a navigable waterway of the United States.

In response to your question number four, the vessel was permanently moored on July 09, 2007.

In accordance with the guidelines set forth 49 CFR Part 7, Subpart F, the fee for processing this request is $12.29. Please attach a copy of this letter to your check or money order, **payable to the Treasury of the United States** and send to:

U.S. Coast Guard
1615 Poydras Street
Suite 700
New Orleans, LA 70112
Attn: FOIA FEES

If you have any questions regarding this matter, please contact LT Tonya Lim at the above telephone number.

Sincerely,

/s/ S.R. Keel

S.R. KEEL
Lieutenant Commander
U.S. Coast Guard
By direction of the Officer
in Charge
Marine Inspection

SUPREME COURT OF LOUISIANA

NO. 2009 CC 1357

JEFFREY C. BOURGEOIS, INDIVIDUALLY AND ON BEHALF OF DALE BOURGEOIS, MARK BOURGEOIS, INDIVIDUALLY AND ON BEHALF OF DALE BOURGEOIS, REBEKAH L. BOURGEOIS, INDIVIDUALLY AND ON BEHALF OF DALE BOURGEOIS AND RENEE B. BOURGEOIS

Applicants/Plaintiffs

VERSUS

BOOMTOWN, L.L.C. OF DELAWARE, PINNACLE ENTERTAINMENT, INC. ORE, M/V BOOMTOWN BELLE II AND LOUISIANA A-1 GAMING, A LOUISIANA PARTNERSHIP IN COMMENDAM

Respondent/Defendant

OPPOSITION TO APPLICATION FOR SUPERVISORY WRITS TO REVIEW THE RULING OF THE FIFTH CIRCUIT COURT OF APPEAL, DOCKET NO. 09-C-243 CONCERNING THE RULING OF THE 24th JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON DIVISION C, DOCKET NO. 651937 HONORABLE JUDGE JUNE BERRY DARENSBERG, PRESIDING

Respectfully submitted,

GAUDRY, RANSON, HIGGINS & GREMILLION, LLC

/s/ Daryl A. Higgins
DARYL A. HIGGINS (#6868)
A. MARK FLAKE (#18214)
401 Whitney Avenue, Suite 500
Gretna, Louisiana 70056
Telephone: (504) 362-2466
Facsimile: (504) 362-5938
Attorneys for Boomtown, L.L.C. of Delaware, Pinnacle Entertainment, Inc. of Delaware, M/V BOOMTOWN BELLE II and Louisiana A-1 Gaming, a Louisiana Partnership in Commendam

* * *

The casino has not been used as a seagoing vessel since April 1,2001, when the change in the law became effective, and has been permanently moored to land at its present location ever since.[24] There is no plan to move the casino; rather, the intent is to continue to use it as an indefinitely moored floating casino.

* * *

---

[24] See Exhibit B Affidavit of Reynold Gaspard, Paragraphs 2, 3 and 4.

U.S. Department of Homeland Security

United States Coast Guard [LOGO]

2100 Second Street, S.W.
Washington, DC 20593-0001
Staff Symbol: CG-5413
Phone: (202) 372-1545
Fax: (202) 372-1830
Email:

Commandant
United States Coast Guard

Apr. 10, 2009

Ms. Elizabeth Ann Wills, P.E.
Deputy Director of Implementation
Office of Coastal Protection and Restoration
P.O. Box 44027
Baton Rouge, LA 70804-4027

Dear Ms. Wills,

On behalf of Admiral Allen, this is in response to your letter of April 7, 2009, requesting that the Coast Guard mandate that all vessels be moved out of certain waterways in the Lower Mississippi River prior to the onset of a tropical storm. After conferring with Coast Guard officials in the New Orleans area, we are confident that your concerns are already being addressed. Coast Guard Sector New Orleans is taking significant steps to mitigate the risk to the most vulnerable areas of New Orleans. These areas include the Inner Harbor Navigation Canal (IHNC) and a portion of the Harvey Canal.

Coast Guard Sector New Orleans officials met with the Southeast Louisiana Flood Protection Authority on January 16, 2009, to discuss areas of concern for

the upcoming hurricane season. In attendance for the Southeast Louisiana Flood Protection Authority were Mr. Tim Doody, Mr. Bob Turner and Mr. John Barry. In response to concerns raised at this meeting, the Coast Guard will take all actions necessary to prohibit all vessels from being in an area 1000 feet east of the IHNC Surge Reduction Barrier projected location west through the Gulf Intracoastal Waterway and IHNC out to Lake Ponchartrain and the Mississippi River. Furthermore, all vessels will be prohibited from the Harvey Canal between Lapalco Boulevard Bridge and the intersection of the Harvey Canal and the Algiers Alternate Route of the Intracoastal Waterway. These designated areas shall not be used a safe haven. These requirements will be in effect 24 hours prior to expected gale force winds through post storm landfall, or other conditions as determined by the Captain of the Port. If necessary, the Captain of the Port is prepared to issue specific orders directed at lingering vessels.

These requirements will be part of the Sector New Orleans Maritime Hurricane Contingency Port Plan (MHCPP) which will be updated prior to the 2009 Hurricane Season. A copy of the MHCPP may be viewed at:

http://homeport.uscg.mil/mycg/portal/ep/portDirectory.do?tabId=1&cotpId=39.

Coast Guard Sector New Orleans has already been working with – and will continue to work with – federal, state and local officials and the maritime

industry in developing changes to the Maritime Hurricane Contingency Port Plan. On March 18, 2009, Sector New Orleans held a Maritime Hurricane Contingency Port Plan work group meeting that was attended by numerous federal, state, and local officials and the maritime industry.

The Coast Guard is dedicated to ensuring the safety of navigation in the New Orleans area and will continue to work to evaluate areas of high risk and assist in protecting the people of New Orleans. If you have any questions, please feel free to contact Sector New Orleans Captain of the Port, Captain Lincoln Stroh at (504) 846-6184.

Sincerely,

/s/ Wayne A. Muilenburg
WAYNE A. MUILENBURG
Captain, U.S. Coast Guard
Office of Waterways Management
By Direction

TWENTY-FOURTH DISTRICT COURT
PARISH OF JEFFERSON
STATE OF LOUISIANA

JEANETTE G. MULLER — CASE NO.: 582-836

VERSUS — DIVISION: "E"

BOOMTOWN OF DELAWARE, LOUISIANA GAMING ENTERPRISES, INC., LOUISIANA 1 GAMING, A LOUISIANA PARTNERSHIP IN COMMENDAM

* * *

(Filed Jan. 22, 2009)

The deposition of DIAN DAVIS, given in the above-entitled cause, pursuant to the following stipulation, before Dorothy N. Gros, a Certified Court Reporter, authorized to administer oaths of witnesses pursuant to Section 961.1 of Title 13 of the Louisiana Revised Statutes of 1950, as amended, reported at Boomtown Casino, 4132 Peters Rd., Harvey, Louisiana 70058, on Wednesday, October 11, 2006, beginning at 3:00 p.m.

[2] APPEARANCES:

LAW OFFICE OF LYNN ERIC WILLIAMS, JR.
(BY: SCOTT W. SMITH, ESQ.)
826 Focis Street, Suite 100
Metairie, Louisiana 70005
For: Jeanette G. Muller

LAW OFFICE OF A. EDWARD CANGELOSI
(BY: A. EDWARD CANGELOSI, ESQ.)
126 N.E. Eglin Parkway
Fort Walton Beach, Florida 32548
(850) 664-2705
For: Boomtown of Delaware

REPORTED BY: DOROTHY N. GROS, CCR
CERTIFIED COURT REPORTER

* * *

[29] BY MR. SMITH:

Q. Is Boomtown's policy for cocktail servers basically load the tray as much as you can handle?

A. No.

Q. What's the policy regarding loading a tray?

A. Boomtown's policy is to service your customers within 20 to 30 minute intervals and that's the basic requirement. So if you want to go out there with five drinks on a tray, fine, once you serve the customers. If you want to go out there with 10 drinks on a tray, it's up to the person that serves the customers.

* * *

[41] Q. And basically, there's the requirement of serving a customer every 20 to 30 minutes?

A. Customers every 20 to 30 minutes.

* * *

[57] BY MR. SMITH:

Q. Get them served every 20 to 30 minutes.

A. Yes. And work at your pace.

Q. Keep them drinking and gambling.

A. Keep them happy, you know.

* * *

[60] BY MR. SMITH:

Q. Three finals for the same incident meaning if I got three finals for not serving someone every 20 minutes, I am terminated?

MR. CANGELOSI: After three verbals and then a written verbal, okay? So, I'm just trying to condense it into that. She gave you the whole spectrum.

BY MR. SMITH:

Q. Okay. Is that your policy or the Boomtown policy?

A. That's Boomtown policy.

* * *